



POLICE DEPARTMENT

July 13, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Michael Kaminsky
Tax Registry No. 944689
75 Precinct
Disciplinary Case No. 2013-9684

Police Officer Nicholas Muro
Tax Registry No. 924225
75 Precinct
Disciplinary Case No. 2013-9682

The above-named members of the Department appeared before me on February 13, and April 23, 2015, charged with the following:

Disciplinary Case No. 2013-9684

1. Said Police Officer Michael Kaminsky, assigned to the 75th Precinct, on or about March 11, 2013, while on-duty, pursued a motor vehicle in an attempt to initiate a traffic stop and failed to notify the radio dispatcher at the start of the pursuit.

P.G. 212-39, Page 1, Paragraph 3 – VEHICLE PURSUITS

2. Said Police Officer Michael Kaminsky, assigned to the 75th Precinct, on or about March 11, 2013, while on-duty, failed to immediately request the response of a patrol supervisor at the scene of a motor vehicle accident that involved the demise of the operator of a vehicle that he pursued.

P.G. 212-53, Page 1, Paragraph 1 – COMMAND RESPONSIBILITIES WHEN
A PERSON DIES OR SUSTAINS A
SERIOUS INJURY IN CONNECTION
WITH POLICE ACTIVITY

3. Said Police Officer Michael Kaminsky, assigned to the 75th Precinct, on or about March 11, 2013, while on-duty, engaged in conduct prejudicial to the good order,

efficiency or discipline of the Department in that Police Officer Kaminsky failed to promptly provide the Patrol Supervisor (and/or any other supervisor) with the facts and circumstances that led to the fatal crash of a vehicle that he pursued.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT

Disciplinary Case No. 2013-9682

1. Said Police Officer Nicholas Muro, assigned to the 75th Precinct, on or about March 11, 2013, while on-duty, pursued a motor vehicle in an attempt to initiate a traffic stop and failed to notify the radio dispatcher at the start of the pursuit.

P.G. 212-39, Page 1, Paragraph 3 VEHICLE PURSUITS

2. Said Police Officer Nicholas Muro, assigned to the 75th Precinct, on or about March 11, 2013, while on-duty, failed to immediately request the response of a patrol supervisor at the scene of a motor vehicle accident that involved the demise of the operator of a vehicle that he pursued.

P.G. 212-53, Page 1, Paragraph 1 – COMMAND RESPONSIBILITIES WHEN
A PERSON DIES OR SUSTAINS A
SERIOUS INJURY IN CONNECTION
WITH POLICE ACTIVITY

3. Said Police Officer Nicholas Muro, assigned to the 75th Precinct, on or about March 11, 2013, while on-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Muro failed to promptly provide the Patrol Supervisor (and/or any other supervisor) with the facts and circumstances that led to the fatal crash of a vehicle that he pursued.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office. Respondent Kaminsky and Muro were represented by John Tynan, Esq. Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. The Department called Lieutenant Shawn Tuthill, Police Officer Syed Jafri, Sergeant Dhenpup Chadotsang and Sergeant Justin Simms as witnesses. Respondents

testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After evaluating the testimony and evidence presented at the hearing, this tribunal finds Respondent Kaminsky guilty of the misconduct set forth in Specifications 1 and 3 of Disciplinary Case No. 2013-9684, and Respondent Muro guilty of the misconduct set forth in Specification 3 of Disciplinary Case No. 2013-9682. Respondents are found not guilty of the remaining charges.

FINDINGS AND ANALYSIS

Introduction

It is undisputed that at approximately 4:45 a.m. on March 11, 2013, Police Officers Joseph Baker and Syed Jafri observed Motorist A strike a parked car. As the officers approached Motorist A's vehicle, Motorist A drove away. The officers, activating their turret lights and sirens, pursued Motorist A. When Respondents saw Baker and Jafri pass the location where they were conducting a directed patrol, they joined the pursuit. Respondent Muro was the RMP operator, and Respondent Kaminsky was the recorder. Motorist A was speeding and evaded traffic signals. At one point, Respondents overtook Baker and Jafri to become the vehicle directly behind Motorist A. Respondents followed Motorist A for approximately 20 blocks before losing sight of him. Several blocks later, Motorist A crashed into a bus and a gas station. There was an explosion, and Motorist A

died. Within approximately a minute of the crash, Baker, Jafri, and Respondents arrived at the scene.

Specification No. 1

Respondents stand charged with failing to notify the radio dispatcher at the start of the pursuit. Department's Exhibit 1 is the audio recording of the radio transmissions from that time. Respondents admitted that they did not make any transmissions, claiming that their actions did not technically constitute a pursuit since they were just following Motorist A's car in a backup role to Baker and Jafri. According to Respondents, as the initial unit to engage in the pursuit, it was Baker and Jafri's duty to make the radio transmission. (Tr. 121-23, 145)

This tribunal rejects Respondents' argument. Respondents had their turret lights on as they ran red lights to keep up with Motorist A who was traveling at an "extremely high rate of speed." They were at times the car immediately behind Motorist A. (Tr. 16-17 106, 108-10, 140) There is no doubt that Respondents were actively engaged in the pursuit of Motorist A, triggering the duty to notify the radio dispatcher.

Tuthill, the investigator assigned to Respondents' cases, explained that the purpose of the notification is to allow a supervisor to determine whether the pursuit should proceed or be terminated. (Tr. 37) Respondent Kaminsky testified about extensive pedestrian and vehicular traffic in the neighborhood. (Tr. 138, 141) Had a supervisor been aware that a high-speed pursuit involving multiple RMPs was taking place in such an area, it is quite possible that the supervisor would have terminated the pursuit out of concern for public safety. By failing to provide notification, Respondents denied their supervisors an opportunity to make that determination.

In this particular case, the assigned recorder bears responsibility for this failure. It is the duty of the RMP recorder to operate the radio in these situations. *See Patrol Guide Procedure 202-22* Respondent Kaminsky suggested that at no point during the 20-block pursuit did he have time to make a transmission. (Tr. 137) The fact that events unfolded quickly did not relieve Respondent Kaminsky of his recorder responsibilities. Furthermore, as RMP operator, it would have been unsafe for Respondent Muro to use his radio while chasing Motorist A. Accordingly, Respondent Kaminsky is found guilty of Specification I, and Respondent Muro is found not guilty.

Specification No. 2

Respondents stand charged with failing to immediately request the response of a patrol supervisor at the scene of the accident that resulted in Motorist A's demise. Respondent Kaminsky testified that at the collision scene Baker asked what needed to be done. Respondent Kaminsky told Baker that a patrol supervisor and an ambulance needed to be called. According to both Respondents, Baker specifically told them that he was going to request the response of a patrol supervisor. (Tr. 114-15, 131, 144, 151) Chadotseng, a patrol supervisor who was just a couple of blocks away at the time, quickly responded to the scene upon hearing Baker report over the radio a collision requiring medical assistance. (Tr. 62-63)

Respondents saw that Baker was making the initial radio notifications for the job, and they had no reason to doubt that Baker would request a patrol supervisor as required. They, therefore, concluded that there was no need for them to call for a patrol supervisor themselves. This was a reasonable conclusion. Accordingly, Respondents are found not guilty of this Specification.

Specification No. 3

Respondents stand charged with failing to promptly provide a supervisor with the facts and circumstances that led to Motorist A's fatal crash. Respondents remained at the crash location for at least two hours, securing the scene and directing traffic. (Tr. 113, 116, 145-46) At one point, they engaged Sergeant Simms for assistance getting into their locked RMP. (Tr. 87) At no point, however, did they inform anyone of their participation in Motorist A's pursuit. (Tr. 130, 150)

The Respondents suggested that it was the duty of the supervisors to specifically ask them for any information they might have. Because there were no radio transmissions regarding the pursuit, however, there was no reason for the supervisors to expect Respondents to have any knowledge whatsoever of the crash. While Respondents may not have known the details of Baker and Jafri's commencement of the pursuit, they certainly had information on the final moments preceding Motorist A's collision and demise. Respondents, as experienced police officers, must have known that supervisors and collision investigators would be interested in that information. The fact that they were not forthcoming leaves this tribunal with the impression that they were intentionally attempting to cover-up their involvement in the pursuit that led to the car crash and the death of the driver. Accordingly, they are found guilty of this Specification.

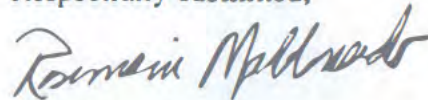
PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent

Kaminsky was appointed to the Department on July 9, 2007. Respondent Muro was appointed on July 7, 1999. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

Respondents have been found guilty of failing to promptly provide a supervisor with the facts and circumstances that led to the fatal crash of a vehicle that they pursued. Respondent Kaminsky has also been found guilty of failing to notify the radio dispatcher of the pursuit. Jafri and Baker were served with charges identical to Respondents'. Last year, they pled guilty to all three specifications and accepted a penalty of 25 vacation days. *See Disciplinary Case Nos. 2013-9680 & 2013-9681* (Aug. 22, 2014). Because Respondents have not been found guilty of all specifications, a lesser penalty seems warranted for them. Accordingly, it is recommended that Respondent Muro forfeit a penalty of 15 vacation days and Respondent Kaminsky forfeit 20 vacation days.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

NOV 19 2015



WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER NICHOLAS MURO
TAX REGISTRY NO. 924225
DISCIPLINARY CASE NO. 2013-9682

On his last three performance evaluations, Respondent Muro received an overall rating of 4.5 "Extremely Competent/Highly Competent" once and 4.0 "Highly Competent" twice. He has been awarded two medals for Excellent Police Duty. [REDACTED]

[REDACTED] Respondent Muro has no prior formal disciplinary record.

For your consideration.



Rosemarie Maldonado
Deputy Commissioner Trials

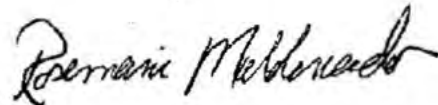
POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MICHAEL KAMINSKY
TAX REGISTRY NO. 944689
DISCIPLINARY CASE NO. 2013-9684

On his last three performance evaluations, Respondent Kaminsky received an overall rating of 4.5 "Extremely Competent/Highly Competent" once and 4.0 "Highly Competent" twice. [REDACTED]

[REDACTED] Respondent Kaminsky has no prior formal disciplinary record.

For your consideration.



Rosemarie Maldonado
Deputy Commissioner Trials